18

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1912. 1913

No. 812. 378.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

SAMUEL E. MOIST.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 15, 1912.

(23423)

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1912.

No. 848.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

SAMUEL E. MOIST.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, begun and held in the United States court rooms in the city of Chicago, in the division and district aforesaid, on the first Monday of November (it being the fourth day thereof), in the year of our Lord one thousand nine hundred and twelve and of the Independence of the United States of America the 137th year.

Present: The Honorable Kenesaw M. Landis and the Honorable George A. Carpenter, judges of said court, presiding; Luman T. Hoy, United States marshal for said district, and T. C. MacMillan, clerk of said court.

2 THE UNITED STATES OF AMERICA
vs.
SAMUEL E. MOIST. } 1967.

Be it remembered that heretofore, to wit, on the 17th day of May, A. D. 1912, there was filed in the clerk's office of the said court, in the above entitled cause, an indictment, said indictment being in the words and figures following, to wit:

3 In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

The grand jurors for the United States of America, impaneled and sworn in the District Court of the United States of America for the Eastern Division of the Northern District of Illinois, at the May, A. D. nineteen hundred and twelve, term thereof, and inquiring for that division and district, upon their oath present that Samuel E. Moist, hereinafter called the defendant, late of the city of Chicago, in the division and district aforesaid, doing business under the names and styles of S. E. Moist Piano Company and Chicago Piano Company, before and at the time of the committing of the offense hereinafter in this indictment mentioned, had devised a scheme and artifice to defraud one Jennie Rosenthal, then resident at Wakefield, in the State of Michigan, and a class of persons then resident within the said United States not capable by reason of their great number and by reason of a want of information on the part of the said grand jurors of being all named in this indictment; that is to say, such persons whom the said defendant intended to induce to purchase pianos from and through him, the said defendant, in the manner and by the means hereinafter in this indictment set forth, which said scheme and artifice to defraud was and is as follows:

He, the said defendant, under the names and styles aforesaid, planned, devised, and intended to insert certain advertisements in various newspapers throughout the United States, each of which advertisements was to contain, among other things, certain imprints

of what is commonly known as and called "a puzzle picture" and other printed matter offering to the public generally certain articles of jewelry and certain other prizes in the nature of, to wit, credit orders on certain pianos, which credit orders were for the sums of, to wit, three hundred fifty dollars for the neatest correct answer to the said puzzle picture, to wit, the sum of three hundred dollars for the next neatest correct answer, and, to wit, the sum of two hundred dollars to fifty certain other persons sending in a correct answer to the said puzzle picture.

And he, the said defendant, planned, devised, and intended, by means of the said several advertisements of the said puzzle picture and the offers of the said amounts of money and the said jewelry, respectively, as aforesaid, to induce the said persons intended to be defrauded to enter into correspondence with him, the said defendant, and to send to him, the said defendant, answers and solutions of the said so-called puzzle picture.

And he, the said defendant, planned, devised, and intended, after receiving such answers and solutions from the said persons intended to be defrauded, to send through the United States mails a certain letter, to wit, a letter of the substance and character of the letter set out on page eight of this indictment, in and by which letter he, the said defendant, planned, devised, and intended to induce the said persons intended to be defrauded, and each of them, to believe that they, the said persons intended to be defrauded, and each of them, had been awarded a certain prize, to wit, a fourteen carat diamond ring, and another prize, to wit, a credit order of, to wit, two hundred dollars, which said credit order of, to wit, two hundred dollars, he, the said defendant, intended to represent to each of the said persons intended to be defrauded to be a credit to be allowed to each of the said persons intended to be defrauded upon the purchase of a certain piano thereafter to be purchased by each of them, the said persons intended to be defrauded, from the said defendant.

And he, the said defendant, also planned, devised, and intended by means of the said letter to induce the said persons intended to be defrauded to believe that each of them would, by reason of the solution and answer to be sent in by each of them, the said persons intended to be defrauded, as aforesaid, obtain from him, the said defendant, a substantial credit of the value of, to wit, two hundred dollars, to be allowed each of them by him, the said defendant, on
5 the purchase price of such piano, thereafter to be purchased by each of them, the said persons intended to be defrauded, from him, the said defendant.

And he, the said defendant, also planned, devised, and intended falsely to represent to each of the said persons intended to be defrauded, that each of them would be entitled to a credit order of, to wit, one hundred fifty dollars in lieu of the said two hundred dollars if each of the said persons intended to be defrauded would decide to select any piano other than the piano hereinabove mentioned, to wit, a piano of a certain make, to the said grand jurors unknown,

which said other piano was to be represented by said defendant to each of said persons intended to be defrauded to be sold by him, the said defendant, to each of the said persons intended to be defrauded at the retail price of, to wit, two hundred and twenty-five dollars; that is to say, at the price of, to wit, seventy-five dollars cash, the balance of the purchase price of which said last mentioned piano was to be represented by the said defendant to said persons intended to be defrauded to be covered by the so-called one hundred and fifty dollar credit order to be awarded as aforesaid, but, on the contrary, as the said grand jurors charge the facts to be, and as said defendant at all of the said times well knew, he, the said defendant, planned, devised, and intended, when each of the said persons intended to be defrauded should, after answering and solving the so-called puzzle picture as aforesaid, make application for a piano under the terms aforesaid, not to sell the said piano of the purchase price of, to wit, two hundred and twenty-five dollars, as aforesaid, to any of the said persons intended to be defrauded, but intended, on the contrary, to endeavor to induce each of the said persons intended to be defrauded to purchase a piano from him, the said defendant, at a much larger purchase price than two hundred and twenty-five dollars, to wit, at a purchase price of, to wit, four hundred and ten dollars, and at other like large prices, the exact amount of which other prices is to the said grand jurors unknown.

6 And he, the said defendant, also planned, devised, and intended that the said credit order of two hundred dollars, so to be represented to be awarded as aforesaid to each of the said persons intended to be defrauded, as he, the said defendant, well knew, would not in fact be a substantial bona fide credit in the sum of two hundred dollars, but on the contrary, he, the said defendant, planned, devised, and intended to allow each of the said persons intended to be defrauded the said credit in the sum of two hundred dollars only as a fictitious credit upon the purchase of a piano thereafter to be purchased by each of the said persons intended to be defrauded from the said defendant; that is to say, he, the said defendant, planned, devised, and intended arbitrarily to advance the price of the piano intended by him, the said defendant, to be sold to each of the said persons intended to be defrauded, in the sum of, to wit, two hundred dollars over and above the actual, usual, and customary retail price thereof; and he, the said defendant, planned, devised, and intended with respect to each of the said prize credit orders to be offered to each of the said persons intended to be defrauded as aforesaid, to advance the retail price respectively of the piano, at which price such piano was to be sold by the defendant to each of the said persons intended to be defrauded, from the actual, usual, and customary retail price thereof, in an amount equal to the amount of the so-called cash prize credit order respectively to be offered to each of the said persons intended to be defrauded, without the knowledge on the part of each of said persons intended to be defrauded that he, the said

defendant, had and would so advance the price of such piano as aforesaid.

And he, the said defendant, by the means aforesaid, planned, devised, and intended falsely to represent to each of the said persons intended to be defrauded that each of them would obtain from the said defendant upon the payment to him, the said defendant, by each of said persons intended to be defrauded, of the difference between the price at which he, the said defendant, intended to sell such
7 piano to each of said persons intended to be defrauded, and said amounts of two hundred dollars and one hundred and fifty dollars as prize credit orders respectively, as the case might be, as aforesaid, a piano of the value of, to wit, the said difference so to be paid to the said defendant by each of the said persons intended to be defrauded as last aforesaid, plus the said two hundred dollars and one hundred and fifty dollars cash prize credit orders respectively as the case might be as aforesaid: whereas in truth and in fact, as the said grand jurors charge the facts to be and as the said defendant at all of said times well knew, he, the said defendant, intended only to deliver to each of the said persons intended to be defrauded, upon the payment by each of the said persons intended to be defrauded, of such difference as aforesaid, a different and other piano of the retail price of, to wit, not to exceed the said difference so to be paid to the defendant by each of the said persons intended to be defrauded as aforesaid, and of little or no value.

And he, the said defendant, planned, devised, and intended, by means of the promises, as he, the said defendant, at all of the said times well knew, to obtain from each of the said persons intended to be defrauded, a large amount of money, the exact amount of which is to the said grand jurors unknown, to wit, such an amount of money in each case as represented the difference between the price at which such piano was to be so sold by the said defendant as aforesaid to each of the said persons intended to be defrauded, and the several amounts of two hundred dollars and of one hundred and fifty dollars respectively as the case might be, as prize credit orders to be allowed to each of the said persons intended to be defrauded, and convert the same money to his, the said defendant's, own use without rendering to the said persons intended to be defrauded, or any of them, any service or thing of value therefor, and thereby to defraud each of the said persons intended to be defrauded of the said amounts of money respectively.

And he, the said defendant, planned, devised, and intended, by means of the premises, also to defraud each of the said persons
8 intended to be defrauded of a large amount of time and labor of the said persons intended to be defrauded to be expended by each of them in and about the solution and answering by each of them of the said so-called puzzle pictures, which said time and labor would be of the value of, to wit, ten dollars.

And he, the said defendant, planned, devised, and intended, by means of the promises, to induce each of the said persons intended to

be defrauded to travel from their respective homes to the said city of Chicago for the purpose of selecting a piano to be purchased by each of them under the terms, and in the manner, and by the means aforesaid, and thereby he, the said defendant, planned, devised, and intended to cause each of the said persons intended to be defrauded wholly to lose a further large amount of time of the value of, to wit, ten dollars.

And he, the said defendant, planned, devised, and intended by means of the promises, to cause each of the said persons intended to be defrauded to expend a large amount of money of the said persons intended to be defrauded as carfare, and to incur other expenses on their behalf in and about traveling to and from Chicago, for the purpose of making a selection of a piano to be purchased by each of them, the said persons intended to be defrauded, from him, the said defendant, in the manner aforesaid, which carfare and other expenses would be of the amount and value of, to wit, one hundred dollars.

And he, the said defendant, intended, by means of the promises, to cause each of the said persons intended to be defrauded wholly to lose in the manner aforesaid each of the said several sums and the time and labor of the said several persons intended to be defrauded of the value hereinabove mentioned, and thereby he, the said defendant, planned, devised, and intended to defraud each of the said persons intended to be defrauded of the said several sums of money and of the said time and labor of each of them of the value aforesaid, without intending to render or cause to be rendered to them and each of them any service or thing of value therefor.

9 And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Samuel E. Moist, on, to wit, the twelfth day of August, in the year of our Lord nineteen hundred and eleven, so having devised the said scheme and artifice to defraud, for the purpose of executing the same scheme and artifice and for the purpose of attempting so to do, unlawfully, fraudulently, wilfully, and feloniously did place in the post office of the said United States at Chicago aforesaid, and cause to be placed in that post office, to be sent and delivered by the said post office establishment of the said United States to the said Jennie Rosenthal, at Wakefield, in the State of Michigan, a certain letter of the tenor which here follows, to wit:

10 Long Distance Phone Monroe 3880.

CHICAGO PIANO CO.
Not Inc.
PIANOS—ORGANS.
Warerooms and Factory Wholesale Office.
1351 Milwaukee Avenue.

CHICAGO, Aug. 12, '11.

ENCLOSED FIND STICK PIN WITH OUR COMPLIMENTS. YOU MUST CALL AT OUR STORE TO CLAIM THE $200 COUPON PRIZE AND DIAMOND RING. ONE OF THE LARGEST PRIZE ORDERS—$200.00—AWARDED TO YOU. 14KT. DIAMOND RING FREE TO PURCHASERS OF OUR MAKE NEW PIANOS. NEW $225.00 FOR $75.00.

REPORT TO FACTORY HEADQUARTERS MUST BE MADE BY AUG. 16, 1911, SO YOU MUST CALL BEFORE THAT DATE TO CLAIM YOUR PRIZE AND SELECT PIANO.

Mrs. M. J. Rosentaul.

DEAR FRIEND: You have been awarded one of the largest Credit Orders for your answer to our puzzle. This letter is your order to select any New Piano of our make and receipt for $200.00 will be given you on account, and the balance may be paid in monthly payments. After your selection, you will be given one of our 14k Diamond Rings (Ladies' or Gentlemen's), absolutely free.

Should you decide on any of the ten other makes of New Pianos we sell, you will be credited $150.00.

Do not fail to see the beautiful piano we are offering for $225.00 during our special sale which we are now having. Do not write but come to our sales room and see THE GREATEST PIANO BARGAINS EVER OFFERED IN THIS STATE. This piano is sold the world over for $300.00, and all it will cost you with the advance price order is $75.00.

One order only will be accepted from a customer and credit will be allowed to purchaser from this date until Aug. 16, 1911, and not on any order taken before this date.

DO NOT WAIT, for unless you advise us within seven days that you will claim your prize so we will know that you will call by Aug. 16, 1911, your name will be taken from our list and the next person on the list will be notified.

Any piano selected now can be left at our store to be delivered at any future date without extra charge.

To make it equal for all, we will pay any purchaser's railroad fare within 100 miles from Chicago.

Awaiting an early call or the courtesy of a letter from you, we are

Yours, truly,

CHICAGO PIANO COMPANY.
J. W. WERNER, *Mgr.*

P. S.—Open every evening during this sale.

11 which said letter, when so placed in the said post office of the said United States at Chicago aforesaid, and so caused to be placed in that post office as aforesaid, so to be sent and delivered by the said post-office establishment as aforesaid, was then and there enclosed in an envelope which then and there bore uncancelled United States postage and was directed and addressed to the said Jennie Rosenthal at Wakefield in the State of Michigan, the exact amount of postage and the exact direction and address which was then and there on the said envelope being to the said grand jurors unknown; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

JAMES H. WILKERSON,
United States Attorney.

12 (Endorsed:) No. 4961. United States District Court, Northern District of Illinois, Eastern Division. The United States of America vs. Samuel E. Moist. Indictment for violation section 215 of Criminal Code. A true bill. Henry A. Severy, foreman. Filed in open court this 17th day of May, A. D. 1912. T. C. MacMillan, clerk.

13 And afterwards, to wit, on the 31st day of May, A. D. 1912, there was filed in the clerk's office of said court, in the above-entitled cause, a demurrer; same being in the words and figures following to wit:

In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

UNITED STATES
vs.
SAMUEL E. MOIST.

Demurrer.

And the said Samuel E. Moist, in his own proper person, now comes into court here and having heard the said indictment read, says that the said indictment and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he, the said Samuel E. Moist, is not bound in law to answer the same. And this he is ready to verify, wherefore, for want of a sufficient indictment in this behalf, the said Samuel E. Moist prays judgment and that by the said court he may be dismissed and discharged from the said premises in the said indictment specified.

SAMUEL E. MOIST.

ROY D. KEEHN, *Attorney.*

(Endorsed:) Gen. No. 4961. U. S. District Court. United States *vs.* Samuel E. Moist. Demurrer. Filed May 31, 1912. T. C. MacMillan, clerk.

14 MONDAY, *October 14, 1912.*

CARPENTER, J.

And afterwards, to wit, on the 14th day of October, A. D. 1912, the following order was had and entered of record in said cause before the Honorable George A. Carpenter, judge of said court, to wit:

THE UNITED STATES
vs.
SAMUEL E. MOIST. } 4961.

This cause coming on to be heard on the demurrer of the defendant to the indictment filed herein against him, come the parties by their attorneys and the court having heard the arguments of counsel and having considered same and the briefs submitted and being fully advised in the premises:

It is ordered that said demurrer be and the same hereby is sustained.

15 And afterwards, to wit, on the 6th day of November, A. D. 1912, there was filed in the clerk's office of said court, in the above-entitled cause, an assignment of errors, same being in the words and figures following, to wit:

United States of America, Northern District of Illinois, Eastern Division.

IN THE DISTRICT COURT THEREOF,
November term, A. D. 1912, ss:

UNITED STATES
v.
S. E. MOIST. } No. 4961.

Assignment of errors.

And now comes the plaintiff, the United States of America, by its attorney, James H. Wilkerson, attorney for the Northern District of Illinois, and says that there is manifest error on the face of the record in the above entitled cause in this:

1. That the District Court of the United States for the Northern District of Illinois, Eastern Division, erred in sustaining the demurrer to the indictment in the above entitled cause.

2. That the court erred in not overruling the demurrer to the said indictment in that the court failed to find that the said acts mentioned in said indictment are a violation of section 215 of the Criminal Code.

J. H. WILKERSON,
United States Attorney, Attorney for Plaintiff.

(Endorsed:) No. 4961. In the District Court of the United States for the Northern District of Illinois, Eastern Division. United States vs. S. E. Moist. Assignment of errors. Filed Nov. 6, 1912. T. C. MacMillan, clerk.

16 And afterwards, to wit, on the 6th day of November, A. D. 1912, there was filed in the clerk's office of said court, in the above entitled cause, plaintiff's petition for a writ of error; same being in the words and figures following, to wit:

United States of America, Northern District of Illinois, Eastern Division.

IN THE DISTRICT COURT THEREOF,
November Term, A. D. 1912, ss:

UNITED STATES
v.
S. E. MOIST. } No. 4961.

Petition.

To the Honorable George A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Your petitioner, the United States of America, by James H. Wilkerson, attorney for the Northern District of Illinois, respectfully

states and shows that on the fourteenth day of October, A. D. nineteen hundred and twelve, at the regular October term, 1912, of said District Court of the United States for the Northern District of Illinois, Eastern Division thereof, a final order was entered in said court sustaining the demurrer of the defendant S. E. Moist against an indictment which the grand jurors of the United States, impaneled and sworn in said District Court of the United States for said division and district, had returned as a true bill against said S. E. Moist for a violation of section 215 of the Criminal Code. Your petitioner further shows that the said order sustaining said demurrer involves the construction of said section 215 of the Criminal Code.

Your petitioner further states that as he is advised the court erred in sustaining said demurrer.

Your petitioner further shows that the act of March 2, 1907, ch. 2564, 34 Statutes at Large, 1264, provides that a writ of
17 error may be taken by and on behalf of the United States from the District or Circuits Courts direct to the Supreme Court of the United States in all criminal cases in the following instances, to wit:

From a decision or judgment quashing, setting aside, or sustaining a demurrer to any indictment or any count thereof where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded.

Wherefore your petitioner prays that a writ of error may be granted in said cause to the Supreme Court of the United States as by law provided, and that your petitioner be allowed said writ of error and that the record in said case be ordered to be certified to the Supreme Court of the United States as by law provided, to the end that the errors complained of, if any such have occurred, may be duly corrected, and full and separate justice done in the premises.

J. H. WILKERSON,
United States Attorney, Attorney for Plaintiff.

(Endorsed:) No. 4961. In the District Court of the United States for the Northern District of Illinois, Eastern Division. United States vs. S. E. Moist. Plaintiff's petition for a writ of error. Filed Nov. 6, 1912. T. C. MacMillan, clerk. James H. Wilkerson, United States attorney.

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the District Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between The United States of America and Samuel E. Moist, a manifest error hath happened to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be

duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 5 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 8th day of November, in the year of our Lord one thousand nine hundred and twelve.

[SEAL.] T. C. MACMILLAN,
Clerk of the District Court of the United States for the Northern Dist. of Illinois.

Allowed by—
KENESAW M. LANDIS, *Judge.*

19 (Indorsed:) Supreme Court of the United States. The United States of America vs. Samuel E. Moist. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S. Circuit Court, Northern District of Illinois.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States, a true and complete transcript of the record and proceedings in the foregoing entitled cause this 11th day of November, A. D. 1912.

_____,
Clerk of the District Court of the United States for the Northern District of Illinois.

20 UNITED STATES OF AMERICA, *ss:*

To Samuel E. Moist, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States wherein the United States of America is plaintiff and you are defendant, to show cause, if any there be, why the order rendered against the said plaintiff as in the said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable K. M. Landis this 8th day of November, in the year of our Lord one thousand nine hundred twelve.

[SEAL.] KENESAW M. LANDIS, *Judge.*

21 On this 9th day of November, in the year of our Lord one thousand nine hundred and twelve, personally appeared before

me, the subscriber, ——— ———, and makes oath that he delivered a true copy of the within citation to ——— ———.

Sworn to and subscribed the day of A. D. 19 .

——— ———.

I have served this writ within my district in the following manner, to wit, upon the within named Samuel E. Moist, by delivering a true copy thereof to him personally on the 9th day of November, A. D. 1912, at Chicago, Illinois.

LUMAN T. HOY, *U. S. Marshal*,
By E. C. MARSALES, *Deputy*.

Marshal's fees:

1 service,	2.00
Expenses in lieu of mlg.,	.20
	2.20

(Indorsed:) No. 11102. Supreme Court of the United States. The United States vs. Samuel E. Moist. 14—230. Citation to the Supreme Court of the United States.

22 In the District Court of the United States for the Northern District of Illinois, 9astern Division.

I, T. C. MacMillan, clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record in case No. 4961, wherein the United States is plaintiff and Samuel E. Moist is defendant, prepared in accordance with praecipe filed herein, as same appears from records and files in said cause now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office at Chicago, in said district, this 11th day of November, A. D. 1912.

[SEAL.] T. C. MACMILLAN, *Clerk*.

(Indorsement on cover:) File No. 23423. N. Illinois, D. C. U. S. Term No., 848. The United States, plaintiff in error, vs. Samuel E. Moist. Filed November 15th, 1912. File No., 23423.

O

FILED MAY 6, 1913.
JAMES H. McKENNEY,
Clerk.

No. 378.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

THE UNITED STATES, PLAINTIFF IN ERROR,

v.

SAMUEL E. MOSES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION BY THE UNITED STATES TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
SAMUEL E. MOIST. } No. 848.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Attorney General, and, in accordance with the provisions of the Criminal Appeals Act under which this case arises, moves the court to advance it for hearing at an early day convenient to the court during the next term.

The indictment was for a violation of section 215 of the Criminal Code by using the mails to further a scheme or artifice to defraud.

The particular charge in this case was a scheme of allowing as prizes certain alleged substantial credits upon the purchase price of pianos, whereas in fact the said purchase price had arbitrarily been raised above the actual and customary retail price to an amount equal to the said alleged credits.

The court below sustained a demurrer to the indictment without opinion, but apparently on the authority of the Court of Appeals for the Seventh Circuit in *Miller* v. *United States* (147 Fed., 35).

The Courts of Appeals for the Eighth Circuit (*Horn* v. *United States*, 182 Fed., 721; *Brooks* v. *United States*, 146 Fed., 223; *Harris* v. *Rosenberger*, 145 Fed., 449) and for the Second Circuit (*United States* v. *Palmieri*, 169 Fed., 490; *Wilson* v. *United States*, 190 Fed., 427) are the other way and support the indictment.

Due notice of this motion has been served upon opposing counsel.

JAMES C. MCREYNOLDS,
Attorney General.
WINFRED T. DENISON,
Assistant Attorney General.

APRIL 29, 1913.

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